



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/169895

PRELIMINARY RECITALS

Pursuant to a petition filed November 06, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 03, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept against the Petitioner for a public assistance debt of \$57.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Belinda Brown
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 22, 2014, the Petitioner requested a hearing regarding her FS allotment for February 1, 2014. The agency had determined that her FS benefits would be reduced from \$84/month to \$15/month effective February 1, 2014. That case was designated as DHA Case No. FOO/155046.

Petitioner requested that her FS benefits be continued pending a hearing decision. On April 10, 2014, a hearing was conducted. On April 25, 2014, a decision was issued by DHA finding that the agency properly determined the Petitioner's FS benefits at \$15/month effective February 1, 2014.

3. On February 11, 2015, the agency issued a FoodShare Overpayment Notice to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$57 for the period of February 1 – 28, 2014. The notice also informed the Petitioner of the right to request a hearing regarding the overpayment by filing an appeal no later than May 12, 2015.
4. The Petitioner did not file an appeal by May 12, 2015.
5. On April 2, 2015, May 4, 2015 and June 2, 2015, the agency issued dunning notices to the Petitioner.
6. On July 17, 2015, the agency issued a notice of state tax intercept to the Petitioner. The notice informed her of the right to request a hearing of the agency's action by filing an appeal within 30 days of the date of the notice.
7. On November 6, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of cases if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g). An appeal of a tax intercept action must be filed within 30 days of the date of the notice. Wis. Stat. § 49.85(3)(b).

In this case, the Petitioner argued that she has not had an open FS case since April of this year though she believes she was entitled to FS benefits. She argues that by not receiving benefits she is entitled to, it should be considered a repayment of the benefits she owes. The Petitioner is mistaken. If she had continued to receive benefits, a portion of the benefits would have been withheld to repay the \$57 debt.

In any case, the Petitioner's appeal is not timely with regard to the FS overpayment action or the tax intercept action. Therefore, I cannot rule on the merits of the case and the case must be dismissed.

CONCLUSIONS OF LAW

The Petitioner's appeal is not timely.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 29th day of December, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 29, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit